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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/599,089	09/19/2006	Simon Walker	P597 0005/GNM	3955

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CANADA

EXAMINER
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WENDELL, MARK R

ART UNIT	PAPER NUMBER
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3635

NOTIFICATION DATE	DELIVERY MODE
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10/01/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mail@patentable.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/599,089	<b>Applicant(s)</b> WALKER, SIMON	
	<b>Examiner</b> MARK R. WENDELL	<b>Art Unit</b> 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,4,6,12,13,16,20-23 and 25-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4,6,12,16,21,22,26-28,32,33 and 37-39 is/are rejected.
- 7) ☒ Claim(s) 13, 20, 23, 25, 29-31, 34-36, 40 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Objections***

Claim 20 is objected to because of the following informalities: The claim language omits to which claim it depends upon. For examination purposes, the claim will be assumed to depend upon independent claim 12. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, 26-28, 32-33 and 37-39 are rejected under 35 U.S.C. 102(b) as being unpatentable over Platt (US 6718710). Regarding claims 1, 26 and 37, Platt illustrates in Figures 1 and 4-7, as well as discusses throughout the specification a post system for a railing (see Figure 1), the post system comprising:

- A railing post (4) having first (bottom) and second (top) ends; and
- A post base (14 and 16) connectable to said first end of said railing post, said post base comprising:
  - An inner structural member (16) made of a first material (See column 4, lines 1-12 where it states that the item can be made from

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aluminum or PVC, aluminum being different from the casing 14) completely encased within a surface member, or housing, (14) made of a second material different than the first material (PVC, see column 1, lines 50-55 which states that the railing and post are made from PVC and column 5, lines 4-8 which states that item 14 is made from the same material as the post), the inner structural member having top and bottom surfaces (top and bottom surfaces of 18) and apertures (19) extending through the inner structural member between the top and bottom surfaces, the surface member having portions (20) extending through the apertures;

- The post base having a top surface, a bottom surface and a plurality of bores (19, 45 and 46 of Figures 2A and 2B) extending between the top and bottom surfaces of the post base through the portions of the surface member, the bores completely lined by the second material of the surface member (see Figure 4 where the surface member 14 encompasses all apertures and fasteners).

Regarding claim 4, Platt illustrates in Figure 7 the post system comprising one or more fasteners (20), each fastener extending through a corresponding one of the bores and into the railing post (4) for connecting said post base (14 and 16) to said railing post.

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Regarding claims 27-28 and 32-33, Platt illustrates in Figure 7 the top and bottom surfaces of the post base (18) comprises a plurality of horizontal flat surface portions (each quadrant of item 18), each of the horizontal flat surface portions intersected substantially perpendicularly by at least one of the bores (19).

Regarding claim 38, Platt illustrates in Figure 7 the top surface of the post base (14) comprises a central recess (in which item 4 fits into) dimensioned to receive an end of a railing post (4) to be supported by the post base.

Regarding claim 39, Platt illustrates in Figures 4-7 the top surface of said post base (14) further comprising an outer wall top surface that is sloped to distribute water away from said railing post, said outer wall top surface adjacent to said horizontal flat surfaces.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 6, 12, 16 and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Platt (US 6718710). Regarding claims 6 and 12, Platt illustrates in Figures 1 and

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4-7, as well as discusses throughout the specification a post system for a railing (see Figure 1), the post system comprising:

- A railing post (4) having first (bottom) and second (top) ends; and
- A structurally reinforcing insert (16) snugly insertable within said first end of the railing post (see column 4, lines 30-37 regarding discussion about a snug fit due to head 32);
- A post base (14) connectable to said first end of said railing post and receiving the reinforcing insert (16), said post base comprising:
  - An inner structural member (16) made of a first material (See column 4, lines 1-12 where it states that the item can be made from aluminum or PVC, aluminum being different from the casing 14) completely encased within a surface member, or housing, (14) made of a second material different than the first material (PVC, see column 1, lines 50-55 which states that the railing and post are made from PVC and column 5, lines 4-8 which states that item 14 is made from the same material as the post), the inner structural member having top and bottom surfaces (top and bottom surfaces of 18) and apertures (19) extending through the inner structural member between the top and bottom surfaces, the surface member having portions (20) extending through the apertures;
  - The post base having a top surface, a bottom surface and a plurality of bores (19, 45 and 46 of Figures 2A and 2B) extending

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between the top and bottom surfaces of the post base through the portions of the surface member, the bores completely lined by the second material of the surface member (see Figure 4 where the surface member 14 encompasses all apertures and fasteners).

The examiner notes that Platt does not distinctly disclose the railing post being tubular; rather the prior art specification only states that the post is hollow and is silent regarding the specific cross-section shape of the post. Webster's defines the term "tubular" as being "hollow" and "cylindrical." However, Platt teaches in column 3, lines 60-65 that the support block (16) can be tubular and teaches in the background of the invention that it is well-known for posts on decks to be tubular in shape. It would have been obvious to one having ordinary skill in the art at the time of invention to have modified the cross-sectional shape of the post to be tubular and fit snugly with the tubular support block since it is well known in the art to have tubular posts on decking.

Regarding claim 16, Platt illustrates in Figures 4-7 one or more fasteners (20), each fastener extending through a corresponding one of the bores (19, 45 and 46) for connecting said post base to said railing post.

Regarding claim 21, Platt illustrates in Figure 7 the top surface of said post base comprising a plurality of horizontal flat surfaces (each quadrant of 18), at least one of said bores (19) intersecting each of said horizontal flat surfaces for receiving a deck fastener (20) capable of securing the post base to a deck surface (8).

Regarding claim 22, Platt illustrates in Figures 4-7 the top surface of said post base (14) further comprising an outer wall top surface that is sloped to distribute water away from said railing post, said outer wall top surface adjacent to said horizontal flat surfaces.

### ***Allowable Subject Matter***

Claims 13, 20, 23, 25, 29-31, 34-36 and 40 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

The examiner notes that the prior art of record does not distinctly disclose nor obviously suggest or provide motivation to include channels on the interior side of the post walls to engage with fasteners placed in the post wall. The examiner also notes that there is no suggestion or motivation to include a central recessed portion on the bottom surface of the post base.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARK R. WENDELL whose telephone number is (571)270-3245. The examiner can normally be reached on Mon-Fri, 7:30AM-5PM, Alt. Fri off, EST.



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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Richard E. Chilcot, Jr./  
Supervisory Patent Examiner, Art Unit 3635

/M. R. W./  
Examiner, Art Unit 3635  
September 15, 2009